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《美国决认团制度》第13、14、15章汉译及  
翻译评述

A Chinese Translation of Chapters 13, 14 and 15 of *The American Jury System* and a Commentary on the Translation

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## Abstract

*The American Jury System* by Randolph N. Jonakait is considered a good work to popularize the knowledge of the jury system. It gives a systematic description of the history, the mechanism, etc. of the jury system. A Chinese translation of the book can provide a reference for China's judicial reform. This thesis is a translating and analyzing program in which Chapters 13, 14 and 15 of the book are translated and pre-translation preparation, adoption of new term translations as well as an analysis of the translating techniques are elaborated. This thesis adopts such translations as “决认团”, “威定”, “邦” and “提示” initiated by Professor Hu Zhaoyun for “jury”, “verdict”, “state” and “instruction”. After the translation, both lexical and syntactic techniques employed in the translation are illustrated with ample examples. The lexical techniques include addition, conversion of part of speech, collocation, negation and adoption of four-character phrases in Chinese translation, while the syntactic techniques include conversion of clauses and techniques used in translating long sentences and the passive. Techniques used in translating long sentences include linear translation, embedment of modifiers, reversion of the original order of clauses and insertion; techniques used in translating the passive include translation of the English passive into the Chinese passive, conversion of the English passive into the Chinese active and supplementation of words like “受” and “得到”. With the analysis completed, the thesis concludes that difficulties in translating the book lie both in its professionalism and its complex expressions and sentences. To tackle these problems, the author reads works about the jury system to lay a knowledge foundation for the translating task and reads the original text carefully to obtain a thorough understanding of it. Meanwhile, she also realizes that a high language proficiency in both English and Chinese is essential in rendering idiomatic translation.

**Key words:** English-Chinese Translation; the jury system; adoption of new translations of legal terms; lexical translating techniques; syntactic translating techniques

## 摘要

伦道夫·乔纳凯所著的《美国决认团制度》(*The American Jury System*)是一本关于决认团制度(the jury system)的佳作,该书系统讲述了决认团制度的发展历史及运作规则等内容,将该书进行汉译可以为国内司法改革形成借鉴。本论文为翻译硕士专业的翻译实践项目,翻译了该书第13、14和15章,并对译前准备、术语新译及翻译过程中使用的翻译技巧等问题进行了分析评述。对于“jury”、“verdict”、“state”及“instruction”等的翻译,本论文分别采纳了导师胡兆云教授提出的“决认团”、“威定”、“邦”及“提示”等。在翻译之后,作者结合大量具体实例从词汇和句法角度详细分析了所使用的翻译技巧。词汇技巧包括增补、词类转换、搭配、反译及四字格汉译,句法角度包括长句翻译技巧、被动句翻译技巧、从句转换技巧等,其中长句翻译技巧又分为顺译法、拆译法、逆序法和插入法,被动句翻译技巧包括英语被动句译为汉语主动句译法、英语被动句译为汉语被动句译法、添加“受”、“得到”等词的译法。在分析完成后,论文总结得出《美国决认团制度》的汉译困难一在专业知识,二在复杂长句翻译,这就要求译者一要阅读关于决认制度的介绍性书籍,为翻译该书奠定知识基础,二要认真研读原文,以透彻理解原文。同时译者要有扎实的双语读写能力,以译出达意地道的译文。

**关键词:** 英译汉 决认团制度 采纳法律术语新译 词汇翻译技巧 句法翻译技巧



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## Chapter 1 Introduction

Translation plays an important role in cultural exchange. Through the bridge of translation, foreign cultures are introduced to China. The introduction of the jury system to China can be traced back to the late Qing Dynasty. Since then, the proper noun “jury” has been translated variously as “陪审团”, “民审团”, “决罪团”, etc. (胡兆云, 2011b). But are those translations accurate in depicting the system? Problems as such require clarification.

This thesis consists of a translation of Chapters 13, 14 and 15 of the book *The American Jury System* and analyses of techniques the author uses in translating those three chapters. Additionally, it also includes discussions over the adoption of new translations of some legal terms. This chapter is mainly concerned with the background information about the jury system, the motivation for choosing and the significance of translating the book.

### 1.1 A Brief Introduction to the Jury System and *The American Jury System*

#### 1.1.1 A Brief Introduction to the Jury System and Its Values

The jury system is an important legal system used in countries like Britain, America, Canada, Australia, etc. It is such a system in which the adjudication of criminal cases, or both criminal and civil cases in some places, lies in the hands of the jury, a group of lay persons selected randomly from ordinary people. There are two types of jury—grand jury and petit jury. The grand jury usually consists of 23 people and it is to decide whether there exists enough evidence of crime to bring someone to trial on criminal charges, while the petit jury is a group of 12 people who are summoned to court to listen to the presentation of evidence from both parties of a case under instructions given by judges, after which they retire to the jury room for

deliberation and reach a verdict whether the defendant is guilty or not guilty. So the decision of a case truly lies in the hands of the jury, representatives of ordinary people, instead of judges or lawyers or any other professional law practitioners.

One of the advantages of this practice is that a group of jurors can provide multiple checks on the evidence presented. They may ask questions when they are unclear about or doubtful of any evidence, which will probably elicit further evidence, thus ensuring a maximum presentation of evidence. The other advantage is that this practice also guarantees a maximum of justice because the verdict finally reached is an outcome of collective deliberation, which means that the decision is agreed on by every member of the jury unanimously, or a majority of them in some places, thus it is probably most persuasive, as it is commonly believed that “people’s eyes are discerning”. Furthermore, under this system, ordinary people by serving as jurors are truly involved in trials to decide cases, ensuring that they indeed exercise their rights or even power in the community’s political and judicial life, during which their legal awareness is raised.

The United States of America is a major country adopting the jury system. The system has deeply embedded in the American legal system and become an indispensable part of the nation’s judicial life. The practice of the system fully reflects the democratic spirit that the whole nation always advocates and worships. Under the system, citizens (those who meet jury qualifications) of the nation have a duty to serve as jurors to decide cases. A duty as it is, it can also be regarded as a right to judicial trial which is guaranteed by the constitution. Under the system, ordinary people of the States can truly get involved in the judicial life and have a crucial say in court trials. Thus, in its practice, democracy gets promoted to an extremely high degree.

### **1.1.2 A Brief Introduction to *The American Jury System* and Its Author**

*The American Jury System* is authored by Randolph N. Jonakait who has been teaching *Criminal Law and Procedure and Evidence* in New York Law School since 1983. He has devoted his career to criminal justice system. During the past three decades, Professor Jonakait has published three books, with the first two written for

professionals and the latest one being *The American Jury System* designed for the educated lay audience. The book was published by Yale University Press in 2003. It is a history and description of the U.S. jury system and how it fits into the overall judicial system (New York Law School, 2013). The book consists of 19 chapters. The findings of facts, the selection of jurors, specific procedures in trials, criticism on it, etc. are all explored. The evolution of the system is also described to show what the system was and what it is now from a contrastive perspective. With nearly 30 years observing the jury system at work, Professor Jonakait feels that the jury system basically performs well, though he holds that some changes are required (New York Law School, 2013), which explains why drawbacks of the jury system are also mentioned in *The American Jury System*. In the discussion of drawbacks of the system, the professor's wish for possible betterment and revolution of the jury system is revealed. Despite that, the mainstream of the author's opinion is undoubtedly for the system, as "there is no reason to believe that the judicial alternative is any better" (Jonakait, 2003: 204), just as he states in the book.

## **1.2 Motivations for and Significance of Translating *The American Jury System***

### **1.2.1 Motivations for Choosing to Translate *The American Jury System***

The jury system has long been regarded as an advanced legal system throughout the world. Its significance in promoting democracy is incomparable. As a significant part in the common law, it has also been introduced to China. The term "jury" has been translated as "陪审团" (花之安, 1881), "判决团" (赵心树, 2002), "决罪团" (赵心树, 2008), "民决团" (陈泰和, 2010), etc., with "陪审团" being the most frequently used one. Consequently, most Chinese people with little knowledge of the system perceive it according to the literal meaning of the Chinese translation "陪审团". However, is the jury system really what the three Chinese characters indicate? Professor Hu Zhaoyun (胡兆云) in his works and lectures in 2004 through 2012 such

as “On 决认, 决认团 and 决认员 jury juror” (2006a), “Investigation and Critical Analysis of the Chinese Translations of ‘Jury’ and ‘Juror’ since the Late Qing Dynasty” (2009a), *Translation: Criticisms and Reflections* (2010), “A Second Exploration of the Incorrect and Correct Chinese Translations of the Political and Legal Terms ‘Jury’ and ‘Juror’ Since the Late Qing Dynasty” (2011b) and “A Study on the New Chinese Translations of ‘Jury’ and ‘Juror’ in the New Contexts of Time, Culture and Language” (2012) made explanations on the functions of the jury system and the impropriety of the previous translations like “陪审团”, “决罪团”, “民决团”, etc. before presenting his translation of the proper name which is “决认团”. The author of this thesis followed his research and read his other related papers about the new Chinese translations of English legal and political terms, and learned that the terms “jury”, “verdict” and “state” had been retranslated respectively as “决认团”, “威定” and “邦” by Professor Hu, together with their justifications. Convinced by his elaborations, the author concluded that the new translations such as “决认团”, “决认员”, “威定” and “提示” are with strong rationality and worth to be popularized. Consequently, the desire for popularizing such translations constitutes one of the motivations later in selecting a jury-themed book for the thesis-writing task.

Another motivation derives from the fact that although almost two centuries have passed since the jury system was introduced to China, what the system is and how the system functions still remain little known to most of the Chinese people; even in the current time when legal construction is launched in China, the jury system has not been given enough attention. As stated, the jury system is with remarkable values in facilitating democracy and legal construction. Hence, it is of great necessity to make the system well known to the Chinese. However, Chinese books introducing the jury system are rare. In consideration of this, the decision to translate a book about the jury system was made and the topic “the jury system” was chosen by the author and the other six co-working team members by the time of topic selection for their thesis writing. Afterwards, the book *The American Jury System* by Professor Randolph N. Jonakait was selected.

Besides the two above-mentioned motivations, it is also hoped that during the



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